IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6408 OF 2006

Shri Satish Dattatray Nadgauda
Age: 54 years, Occ. Service,
R/o. Charuhas, 108, Shivgiri Colony,
Gangapur Road, Nashik – 422 005. .. Petitioner

v/s.

1. The State of Maharashtra

2. The State Minister (Education)
Maharashtra, Mantralaya, Mumbai-32.

3. The Secretary, Secondary Education,
Maharashtra State, Mantralaya,
Mumbai-32.

4. The Director (Education)
Maharashtra State,
Central Bldg., Pune-1. .. Respondents

Mr. M.M. Sathaye for the petitioner.
Mr. A.A. Kumbhakoni, Associate Advocate General with Ms. M.P. Thakur, Assistant Government Pleader for the respondent Nos.1,3 and 4.
Mr. A.V. Anturkar with Mr. R.S. Apte and Mr. Uday Warunjikar for the Intervenors.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.
DATED : 3RD MAY, 2007

JUDGMENT (Per F.I. REBELLO, J.)

Rule. Heard forthwith.

2. The petitioner had approached this court to challenge the legality and propriety of G.R. dated 29.7.2006 and G.R. dated 25.11.2005 as described in prayer clause (b) and for a further mandamus to withdraw the said G.Rs. The G.Rs pertain to the revised criteria for regularising posts other than teachers in the private partial/whole time granted Secondary, Higher Secondary Schools, Classes of Higher Secondary/Junior Colleges, Military schools in the State of Maharashtra. The G.R. of 29th July, 2006 is the revised criteria for similar posts. As the matter pertained to creation of post under the provisions of MEPS Act and the Rules framed thereunder, we had issued notice to the State Government as to why considering Article 348 of the Constitution of India, the English translations thereof were not available, as prima facie the said G.Rs were an exercise in subordinate legislation.

Under Article 348(1)(b), the authoritative text of all Bills, amendments, Acts and Ordinances as also all Orders, Rules, Regulations and Bye-laws issued under the Constitution or under any law made by the Parliament or Legislature of State shall be in the English language. By virtue of Article 348(3), where the Legislature of a State has prescribed any language other than the English language for use in Bills or any other order, rule, regulation or bye-law, the translation of the same in English language published under the authority of the Governor of the State in the official Gazette of the State shall be deemed to be the authoritative text thereof in the

English language under this Article.

3. In answer to the said notice, Dr. D.K. Sankaran has filed an affidavit. It is pointed out that the Legislature of the State of Maharashtra has enacted Maharashtra Act No.V of 1965 called “the Maharashtra Official Languages Act, 1964” whereby Marathi language is to be the language used for “all official purposes” referred to in Article 345 of the Constitution except for such purposes as the State Government may by Rules, issued from time to time in the Official Gazette specify. By virtue of Section 5 of the said Act, Marathi, from the appointed day which is 26th January, 1965, is to be used in Bills, Acts, Ordinances as also Orders, Rules, Regulations and Bye-laws issued by the State Government under the Constitution or the Legislature of the State. It is then pointed out that for the purpose of complying with the requirement of Clause 3 of Article 348 and for the purpose of providing the authoritative text, the Governor of the State has issued an order dated 30th September, 1995 whereby the Secretary to the Law and Judiciary Department or his delegate in certain cases and the Secretary of the Administrative Department concerned or his delegate in the remaining cases have been authorised to publish in the Official Gazette the translation in English language of the `authoritative text' of the concerned document as set out in the order.

A perusal of the said notification would indicate that the Secretary, Law and Judiciary Department or his delegate is authorised to publish in the Official Gazette translation in the English

language of the Bills introduced in or Acts passed by the Legislature of the State or the Ordinances promulgated by the Governor in Marathi language as the authoritative text of such Bills, Acts, Ordnances under the said Article. The Secretary of the Administrative Department or his delegate has authority to publish in the Official Gazette, translation in English language of any order, rule, regulation or bye-law issued under the Constitution or under any law made by the Parliament of the Maharashtra Legislature in Marathi language.

4. The issue for consideration is the expression “Orders, Rules, Regulations and Bye-laws. The question would be whether the Government resolutions issued under Article 154 by the State Government would fall under the expression “Orders, Rules, Regulations and Bye-laws”. On behalf of the respondent-State, the learned Associate Advocate General has drawn our attention to the judgment of the Supreme Court in Municipal Corporation of Greater Bombay v. Bharat Petroleum Corporation Ltd., (2002)4 SCC 219. It is submitted that all the terms used in the Article are exercises in subordinate legislation and as such, the expressions should be read ejusdem generis/noscitur a sociis. It is contended that the principles underlying noscitur a sociis is that is that if two or more words which are susceptible of analogous meaning when are coupled together are to be understood as used in their cognate sense, taking, as it were, their colour from each other, that is, the more general is to be restricted to a sense analogous to the less general. The principle underlying ejusdem generis is applied when the statutory provision contains an enumeration of specific words, the subject of the

enumeration thereby constituting a class or category but which class or category is not exhausted at the same time by the enumeration and the general term follows the enumeration with no specific indication of any different legislative intention. This rule which normally envisages word of general nature following specific and particular words to be construed as limited to things which are of the same nature as those specified. Our attention was invited to the Judgement of the Supreme Court in Shri Sitaram Sugar Company Limited and another v. Union of India and others, (1990)3 SCC 223. This judgment has been cited to explain the distinction between the Legislative and the administrative orders. The Supreme Court observed as under:

> "To distinguish clearly legislative and administrative functions is "difficult in theory and impossible in practice". Referring to these two functions, Wade says:
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> "They are easy enough to distinguish at the extremities of the spectrum: an Act of Parliament is legislative and a deportation order is administrative. But in between is a wide area where either label could be used according to taste, for example where ministers make orders or regulations affecting large numbers of people....."
>
> Wade points out that legislative power is the power to prescribe the law for people in general, while administrative power is the power to prescribe the law for them, or apply the law to them, in particular situations.

Proceeding further, the Court observed as under:-

> "Courts, nevertheless, for practical reasons, have distinguished legislative orders from the rest of the orders by reference to the principle that the former is of general application. They are made formally by publication and for general guidance with reference to which individual decisions are taken in particular situations."

We may also gainfully reproduce paras 33 and 34 of the judgment:

> "33. According to Griffith and Street, an instruction may be treated as legislative, even when they are not issued formally, but by a circular or a letter or the like. What matters is the substance and not the form, or the name. The learned authors say: "...where a Minister (or other authority) is given power in a statute or an instrument to exercise executive, as opposed to legislative, powers – as, for example, to requisition property or to issue a licence – and delegates those powers generally, then any instructions which he gives to his delegates may be legislative". Where an authority to whom power is delegated is entitled to sub-delegate his power, be it legislative, executive or judicial, then such authority may also give instructions to his delegates and these instructions may be regarded as legislative. However, as pointed out by Denning, L.J., (as he then was) a judicial tribunal cannot delegate its functions except when it is authorised to do so expressly or by necessary implication: see Barnard v. National Dock Labour Board.
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> 34. Kenneth Culp Davis says: "What distinguishes legislation from adjudication is that the former affects the rights of individuals in the abstract and must be applied in a further proceeding before the legal position of any particular individual will be definitely touched by it; while adjudication operates concretely upon individuals in their individual capacity". Justice

> Holmes' definition, which is what is called the “time test” and which Davis describes as one which has produced many unsatisfactory practical results, reads:
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> > “A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule, to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future, and therefore is an act legislative, not judicial....”

From the above discussion, it would be clear that Article 348(1)(b)(iii) is referable to an exercise in subordinate legislation. If, therefore, any authority under the Act apart from the Rule making power has power to make other forms of subordinate legislation including of making of statutory orders, which are an exercise in subordinate legislation, those orders would also be governed by the aforesaid Article. Their translation would be required as discussed. In so far as the Constitution is concerned, apart from the power conferred on the Parliament or the State Assembly to enact law in respect of the various fields of legislation, there are also other legislative powers, illustration of some of which, may be Article 309, Articles 234, 235, Article 229(2). It is not necessary to refer to the other provisions of the Constitution by which legislative power has been conferred on various constitutional functionaries and other authorities.

In respect of purely administrative functions, even if the exercise of power is co-extensive with the legislative power referable to the power conferred under the Constitution or under any law, the exercise of such power including under Article 154 normally would be administrative. In respect of such administrative powers, we are clearly of the opinion that there is no requirement that the English translation of such Government resolutions or administrative decisions must be made available.

5. The second issue which arose in the course of hearing and in respect of which we issued notice to the Registrar General of this court, concerns the very same Article. We had directed that an affidavit be filed as to why the proceedings in the court including writ petitions filed, were not in the English language considering the practice notes filed from time to time. Our attention has been invited to Rule 2 of Chapter XVII of the rules framed by this court and which are known as the Bombay High Court Appellate Side Rules, 1960. Rule 2 of the said Rules is reproduced herein below:

> "**2.(i) Accompaniments to the application.-** The applicant shall annex to his application typed copies of judgments and/or orders of the lower Courts or Tribunals and of affidavits and other relevant documents which are in English, or, where any of such documents are not in English, typed copies of translations in English of such documents. He shall file along with the application a duplicate copy of the application with the said annexures for the use of the Court. Both the original and the duplicate copy with the prescribed annexures shall be duly paged and indexed:

[Provided that such translations would not be necessary if the documents are in Marathi and if the party or the Advocate undertakes that English translations would be supplied whenever an order in that respect is made by the Court in a particular proceeding.]

(ii) Translations. - Any translations, other than official translations, annexed to the application shall be either certified to be true by the Advocate for the applicant or supported by an affidavit of the applicant affirming that the translations are true.

(iii) Accompaniments to applications against orders of Revenue Tribunal.- In applications against the orders of the Revenue Tribunal, the applicant shall, in addition, file a true copy each of the judgment and/or order of the Revenue Tribunal and certified copies of the judgments and/or orders of the Prant Officer, Mamlatdar or such other officer concerned in the proceedings.

(iv) Accompaniments to applications against orders of Election Tribunal. - In an application against the order of an Election Tribunal, the applicant shall, in addition to the annexures and accompaniments specified above, supply a typed copy of the memorandum of the application.

The proviso was added by a notification dated 6.8.1986.

6. In the affidavit filed on behalf of the Registrar General by the Registrar (Legal), it is stated that the Bombay High Court Appellate Side Rules are framed under section 122 of the Code of Civil Procedure and all other enabling powers in this behalf. We may at

once not that section 122 of the Code of Civil Procedure has conferred power on the High Court as set out therein to make rules regulating their own procedure and the procedure of the Civil Courts. Section 120 sets out that the provisions of sections 16,17 and 20 shall not apply to the High Court in exercise of its Original Civil Jurisdiction. The rules can only be made by the Rule Committee under section 123. That Committee has to report to the High Court. Under section 141, the procedure provided in the Code in regard to suits shall be followed as far as it can be made applicable in all proceedings in any court of Civil Jurisdiction. By virtue of the explanation, it is not applicable to proceedings under Article 226 of the Constitution of India. Nothing has been pointed out whether the proviso was pursuant to a decision of the rules committee, if the proviso was made in the exercise of powers under section 122 of the Civil Procedure Code.

Our attention was invited to various Practice Notes which were issued from time to time as also the Practice Note of 10th August, 2006 as also the circular dated 27th February, 2007 whereby the Acting Chief Justice was pleased to cancel/recall para 3(c) of the Practice Note No.23 dated 10.8.2006 and paras 5,6 and 8(c) of the Practice Note No.24 dated 16.8.2006.

7. In so far as the language of the High Courts are concerned, the same is provided by Article 348(1)(a), which reads as under:

"(1) Notwithstanding anything in the foregoing provisions

of this Part, until Parliament by law otherwise provides-

(a) all proceedings in the Supreme Court and in every High Court,

(b) .....

shall be in the English language.

We need not advert to Article 348(2) as no such steps have been taken under that Article.

8. Parliament has enacted the Goa, Daman &Diu Reorganisation Act, 1987. The appointed date has been notified as 30th May, 1987. under that Act, section 20 which is relevant, reads as under:

"**20. Common High Court for Maharashtra, Goa, Dadra and Nagar Haveli and Daman and Diu.-** (1) On and from the appointed day,-

(a) there shall be a common High Court for the State of Maharashtra and Goa, and for the Union territories of Dadra and Nagar Haveli, and Daman and Diu, to be called the High Court of Bombay (hereinafter referred to as the common High Court);

(b) the Judges of the High Court of Bombay (hereinafter referred to as the existing High Court), holding office immediately before that day shall, unless they have elected otherwise, become, on that day, the Judges of the common High Court.

(2) The expenditure in respect of the salaries and allowances of the Judges of the common High Court

> shall be allocated amongst the States of Maharashtra and Goa and the Union in such proportion as the President may, by order, determine.
>
> (3) On and from the appointed day, the common High Court shall have, in respect of the territories comprised in the States of Maharashtra and Goa and the Union territories of Dadra and Nagar Haveli and Daman and Diu, all such jurisdiction, powers and authority as, under the law in force immediately before the appointed day, are exercisable in respect of those territories by the High Court of Bombay.

It would, therefore, be clear that as and from 30th May, 1987, there is a common High Court for the State of Maharashtra and Goa and the Union Territories of Dadra and Nagar Haveli and Daman and Diu which is called the `High Court of Bombay'. There is nothing like the High Court of Judicature at Bombay. On a reading of section 20 of the Reorganisation Act, 1987 and Article 348(1), it would be clear that the proviso to Rule 2(i) of Chapter XVII of the High Court Appellate Side Rules, does not reflect the present reality, namely the common High Court for two States as also the Union Territories which have different official languages. The said proviso to Rule 2 does not take into consideration section 20 of the Goa, Daman & Diu Reorganisation Act, 1987.

9. Various counsel had intervened which includes Shri A.V. Anturkar, Shri R.S. Apte and Shri Warunjikar, to contend that this court ought not to suo motu consider the said issue. Judges of this court come from different States. Apart from that the constitutional

mandate of Article 348 is clear. What is the meaning of the word “all proceedings” In P. Ramanatha Aiyar's, The Law Lexicon ` proceedings' amongst others has been explained as “proceedings” ordinarily relate to forms of law, to the modes in which judicial transactions are conducted. It can also mean procedure. They cover any proceedings of a legal nature, even though they do not take place in a court of law. The word `proceedings' is wider than the word ` case' and it also includes administrative proceedings. In Black's Law Dictionary, `proceedings' has been defined to mean, “The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment.” “The business conducted by a court or other official body a hearing.”.

From the above, it would be clear that the expression “proceedings” are of wider amplitude and take within it not only proceedings in the court but also business of the court. We may point out that in Madhu Limaye and another v. Ved Murti and others, AIR 1971 SC 2608, the petitioner wanted to address the court in Hindi. The Supreme Court noted the language of the court was English and his intervention was cancelled.

10. It was, however, sought to be contended before us by relying upon the judgment in West Bengal Electricity Regulatory Commission v. CESC Ltd., (2002) 8 SCC 715, that the High Court ordinarily should not on its own consider the validity of a rule or regulation and such determination can be done by an aggrieved party by independently challenging the provisions by way of writ petition. Our attention has

also been invited to the judgments in State of U.P. v. Satya Narain Kapoor (Dead) by LRS. And others, (2004) 8 SCC 630 to point out that the High Court should exercise its power under Article 226 by following established rules, practice and procedure consistant with the rules of natural justice and by framing relevant issues. In the instant case, issue has been framed and notice was also sent to the High Court through the Registrar General on the administrative side, who has filed an affidavit. The larger issue is of following the constitutional mandate as set out in Article 348.

12. The issue pertains to the functioning of this court as a common High Court for the State of Maharashtra, Goa and the Union Territories of Dadra and Nagar Haveli and Daman and Diu. The object behind Article 348 has been brought to our attention by the learned Associate Advocate General, from M.P. Jain Indian Constitutional Law. It would be gainful to refer to what the learned author sets out therein:

> "Difficult problems arise when the question of language is considered in the context of law and the courts. The English common law is the basis of the Indian legal system and, to this end, the English language has been a very useful medium of thought and expression. India has a unified judicial system; there exists a basic unity in the laws prevailing in the country, and decisions of one High Court are freely cited in the other High Courts. The problem of the language of the law thus assumes a special significance. If a High Court adopts the local language, then it would be difficult to cite precedents from this Court in other High Courts. Difficulties would also arise in the functioning of the Supreme Court if the High Courts were

to adopt different languages."

It is not necessary to refer to the various other observations on the purport of Article 348.

13. From the above discussion, it would be clear and we hold that the proviso to Rule 2(1) of Chapter XVII of the High Court Appellate Side Rules would be ultravires Article 348(1)(a) of the Constitution of India. At the same time, we can take into consideration the fact that what is required is speedy disposal of the matters and avoide undue hardship to the litigants, whilst respecting the constitutional mandate. In that context it may be possible to distinguish the documents as those on which the relief is sought and other documents.

14. In that context, we declare the proviso to the said Rule as null and void. However, till this the court takes an appropriate decision on its administrative side, in our opinion, it would be appropriate, by way of interim directions, to follow the procedure set out below, which is based on the practice note issued earlier by the Chief Justice of this High Court.

(i) When the Judgment, Order, Government Resolution/Circular or notification or other document under challenge, is not in English and when the Advocate/Party wants to rely upon the Judgment, Order, Government Resolution/Circular, notification, document which are not in English, typed or xerox

copies of the translation in English of such Judgment, Order, Government Resolution/Circular shall be produced.

ii) When the Advocate/Party wants to produce and refer to other documents, the Advocate/Party shall give an undertaking at the time of filing the petitions that typed English translation thereof shall be produced, if required by the Court.

15. In so far as the issue involved in the petition is concerned, our attention was next invited to the subsequent decisions of the government dated 15th September, 2006 and 27th December, 2006 whereby a Committee has been appointed to look into the issue. Once that be the case, nothing survives in this petition if the parties ultimately aggrieved by the Government decision taken pursuant to the Committee's recommendations. It will be open to the petitioner if ultimately aggrieved to challenge that decision. In so far as the petitioner's other grievances are concerned, in the affidavit of Shri A.M. Bhattalwar, Deputy Secretary, it is set out that the petitioner's appointment as Superintendent has been sanctioned and he is eligible for protection of his post and pay till he retires. In these circumstances, we direct the respondents to release and pay the petitioner's arrears of salary within 12 weeks from today. In so far as his monthly salary is concerned, from June onwards, the same be paid alongwith the other staff.

16. In conclusion, the petition can be disposed of by issuing the following directions:

(i) The respondent-State including all the local authorities who are conferred power to make orders, rules, regulations and bye-laws under the Constitution or under the provisions of the Act must ensure that the English translations of the orders, rules, resolutions and bye-laws are made available in terms of the mandate of Article 348 of the Constitution of India.

(ii) As the object of the Article is to help the litigants and others apart from publication in the Gazette, the Government as also all the local authorities, in so far as orders, rules, regulations and bye-laws made under the Constitution or under the Act, to ensure that the translation as far as possible are also put up on a web-site to obviate difficulties for persons who seek to rely on the same and to ensure that Courts of Law get the official translation of the subordinate legislation at the earliest.

(iii) The proviso to Rule 2(1) of Chapter XVII of the Bombay High Court Appellate side Rules is declared to be null and void. In the meantime, the procedure

to be followed would be as set out in para 14 of this judgment.

The Registrar General to ensure that the Registry of this court at Mumbai and all its Benches comply with this direction till such time as new rules are made.

(iv) In so far as relief sought for by the petitioner in the present petition, in view of subsequent Government decisions, no relief may be granted at this stage. If ultimately the parties are aggrieved by the subsequent Government decision pursuant to the Committee's recommendations, then the petitioner if ultimately aggrieved may challenge that decision.

A copy of this judgment be sent to the Registrar General, to be placed before the learned Chief Justice for his consideration.

(F.I. REBELLO, J.)

(R.M. SAVANT, J.)